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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2613/2015*, **

Submitted by:	Jose Henry Monge Contreras (represented by counsel)
Alleged victim:	The author
State party:	Canada
Date of communication:	29 May 2015 (initial submission)
Document references:	Decision taken pursuant to rules 92 and rule 97 of the Committee's rules of procedure, transmitted to the State party on 29 May 2015 (not issued in a document form)
Date of adoption of Views:	27 March 2017
Subject matter:	Removal to El Salvador
Procedural issues:	Admissibility — exhaustion of domestic remedies/insufficient substantiation of claims
Substantive issues:	Right to life; torture, cruel, inhuman or degrading treatment or punishment
Articles of the Covenant:	6, 7, 9, 17 and 23, read alone and in conjunction with 2 (3)
Articles of the Optional Protocol:	2, 3 and 5

1.1 The author is Jose Henry Monge Contreras, a national of El Salvador born on 19 March 1971 and currently residing in Canada. The author is subject to removal to El Salvador, following the rejection of his application for refugee status in Canada. The removal to El Salvador was scheduled for 30 May 2015. The author claimed that his rights under articles 6, 7, 9, 17 and 23, read alone and in conjunction with article 2 (3) of the International Covenant on Civil and Political Rights, would be violated if Canada

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Anja Seibert-Fohr, Yuval Shany and Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the present communication.

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proceeded with his forcible removal. The Optional Protocol to the Covenant entered into force for the State party on 19 August 1976. The author is represented by counsel.[1]

1.2 On 29 May 2015, the Committee, pursuant to rules 92 and 97 of its rules of procedure, acting through the Special Rapporteur on new communications and interim measures, requested the State party to refrain from removing the author to El Salvador while his case was under consideration by the Committee.

1.3 On 24 June 2016, the Committee, acting through the Special Rapporteur, denied the State party's request to lift the interim measures.

Factual background

2.1 The author was born in Cinquera, El Salvador, on 19 March 1971. He came to Canada in 2005 to flee gang violence. His wife and three daughters are still living in El Salvador.

2.2 The author indicates that during the civil war in El Salvador several members of his extended family were involved with the Farabundo Marti National Liberation Front,[2] while his uncle Ricardo was a member of a government death squad. In 1987, another of his uncles was killed by members of the government death squad commanded by Ricardo because of his involvement in helping Ricardo's wife escape from El Salvador due to Ricardo's violent behaviour. In 1992, after the end of the conflict, Ricardo became a leader of a gang called the Mara Salvatrucha (MS-13).

2.3 In April 1993, Ricardo became very angry with the author's grandmother, mother and brother Manuel because they had entered the house of Ricardo's wife, where he was still living. In May 1993, Manuel was murdered by members of the MS-13 gang. The author helped the police identify the MS-13 gang members who had participated in the killing, and three individuals were convicted and imprisoned for 10 years.[3]

2.4 The author claims that, owing to his involvement in the investigation of Manuel's murder, he became a target of the MS-13 gang. In July 1993, the author was shot in the knee by a gang member.[4] In November 2003, when the gang members convicted of killing Manuel were released from prison, the author and a friend, Carlos Arturo Arevalo, were attacked by suspected MS-13 gang members in front of a local shop. Mr. Arevalo died as a result of the attack. In March 2004, the author and another friend, Martir Gregorio Aguilar, were shot by suspected MS-13 gang members from a car while they were riding their motorcycles. Mr. Aguilar was killed.

2.5 Following those events, the author went into hiding. He moved to Tejute and then to San Matias for a few months. As he did not feel safe, he decided to return home in December 2004. In January 2005, MS-13 gang members threatened the author and his brother with a knife but they managed to escape. After that incident, the author decided to leave the country, leaving behind his wife and his three daughters, aged 19, 17 and 13.

2.6 Since his departure, the author's family has received threats from MS-13 gang members, including letters and telephone calls asking for the author's whereabouts or for money in exchange for not hurting the daughters.[5] The author's wife has made payments of $100 to $200 to MS-13 gang members to protect herself and the family. She has been told that the only reason her family is still alive is because the MS-13 gang knows that at some point the author will have to return to his family.[6]

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[1] Andrew J. Brouwer, Prasanna Balasundaram and Caitlin Maxwell.

[2] One of the guerrilla groups involved in the civil war.

[3] Pre-removal risk assessment decision, 20 April 2015.

[4] The author provides a medical certificate, dated 16 January 2006, stating that he "sustained an injury to this upper right leg, caused by firearm" and that "this occurrence took place in July 1993".

[5] The author includes a letter from the Salvadoran Civil National Police, dated 4 September 2009, stating that the author's family is "at imminent risk of physical integrity because of the threats directed at this family" by the MS-13 gang.

[6] The author includes a copy of a letter from his wife, dated 18 October 2010, stating that the MS-13 gang members told her that "if we have not killed you it is because he (the author) has to return for

2.7 The author's wife tried to move the family to several different locations. In November 2010, MS-13 gang members fired shots towards the family's house while they were sleeping and left a threatening letter.[7] The family therefore decided to move again from their house. Furthermore, the oldest daughter was approached by MS-13 members on her way to school asking her about her father's whereabouts and the youngest daughter was sent to live with her grandparents after being directly threatened.[8] The author's daughters have had to be home schooled because of the threats.[9]

2.8 Upon his arrival in Canada on 9 August 2005, the author filed an asylum application. On 28 April 2009, the Immigration Division of the Immigration and Refugee Board of Canada found that the author was inadmissible to Canada on security grounds, owing to his membership in the Farabundo Marti National Liberation Front prior to 1992, when it was considered an "organization believed to engage in or instigate the subversion by force of any government".[10] An application for ministerial relief from the inadmissibility finding was submitted in July 2013 and again in January 2014, but the author has not yet received a response. The author filed an application for judicial review of the Immigration Division decision, which was dismissed by the Federal Court on 3 March 2010.

2.9 The author applied for a pre-removal risk assessment, which was rejected on 15 October 2009 on the grounds that there was insufficient independent evidence to support a finding of a risk of torture, a risk to life or a risk of "cruel and unusual" treatment or punishment. The author then applied for judicial review of the decision, which was dismissed by the Federal Court on 7 September 2010.[11]

2.10 In October 2010, the author filed a second application for a pre-removal risk assessment, addressing the risk faced in El Salvador with new evidence. His application was rejected on 20 September 2011. On 19 October 2011, the Federal Court granted the author an interim stay of removal pending judicial review of the negative assessment decision.[12] The judicial review was discontinued on 13 December 2011, because the State party agreed to a redetermination of the assessment by a different officer. The author submits that he updated the assessment submission four times since November 2010, with further information on the conditions of the country and the incidents of harassment and threats towards his wife and daughters.

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you". He also includes a copy of the statement by the policeman responsible for the case, dated 30 September 2010, stating that, considering that the author's wife "has been receiving anonymous threatening calls from these gangs [MS-13] ... one can easily determine" that "once they have found him [the author] his wife and daughters will also be in danger".

[7] The author includes a copy of the letter found at the house of the author's wife on 4 November 2010, signed "F. MS VA" stating that "we want information about your husband ... next time these shots won't be at your house or in your door, but in your daughters or in you ... no one messes with us because once we start something we have to finish it". He also includes a copy of the police investigation report and a copy of the Salvadoran Prosecutor General's report, both dated 4 November 2010.

[8] The author includes a letter from a school director, dated 4 September 2009, indicating that the mother claimed that "due to reasons that threaten their physical integrity, they found themselves obligated to move out of their home; so the supporting teachers are helping them ... through work with guides".

[9] The author includes two translated letters from acting school directors, dated 18 June 2012; one states that one of the daughters had to leave school "due to the constant threats by members of MS gang"; and the other states that "it was not possible for them [the other two daughters] to return to the school due ... to the constant threats of the members of the MS gang".

[10] The State party refers to the "Immigration Division decision on inadmissibility". According to para. 2 of the decision, "Mr. Monge Contreras was reported on 26 May 2006 as inadmissible to Canada pursuant to paragraph 34 (1) (f) of the Immigration and Refugee Protection Act, in that he is a foreign national who is inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph 34 (1) (b), namely, engaging in or instigating the subversion by force of any government".

[11] See *Jose Henry Monge Contreras v. Minister of Citizenship and Immigration*, 2010 FC 880, Docket: IMM-5953-09, Federal Court decision (7 September 2010) (judicial review de ision of the first pre-removal risk assessment decision).

[12] See *J.C. v. Minister of Citizenship and Immigration*, Docket: IMM-7074-11; Federal Court order (19 October 2011).

2.11 In July 2012, the author requested permanent residence on humanitarian and compassionate grounds, which was rejected on 21 January 2015. On 9 June 2015, the author's application for judicial review of that decision was dismissed by the Federal Court.

2.12 On 20 April 2015, a third negative pre-removal risk assessment decision was adopted by a new officer, who again found that the author had not provided sufficient evidence to establish that he would be subject to a risk of torture, risk to life or a risk of cruel and "unusual" punishment upon return to El Salvador. The author filed an application for judicial review of the third decision, which was dismissed on 24 September 2015.[13]

2.13 On 28 May 2015, the Federal Court rejected a motion for a stay of execution of the removal, brought under applications for judicial review of a negative pre-removal risk assessment and a negative humanitarian and compassionate decision.[14]

The complaint

3.1 The author claims that, if he is returned to El Salvador, he will face a risk of being arbitrarily deprived of his life, in violation of article 6 of the Covenant, and of being subjected to torture and other cruel, inhuman or degrading treatment or punishment, in violation of article 7 of the Covenant, since he has been a target of the MS-13 gang since 1993 owing to his participation in the investigation of his brother Manuel's murder, which resulted in the conviction of three MS-13 gang members involved in the murder.

3.2 The author alleges that the threats have continued since he left El Salvador. He claims that his wife has faced extensive threats of violence and extortion, that his daughters have been harassed and threatened on their way to school and that the family had to move from their home out of fear.[15] He submits that his return to El Salvador would put him and his family in great danger. He refers to the supporting documentation he provided to conclude that it is common for the MS-13 gang to continue targeting an individual for many years.[16]

3.3 The author provides a statement from the Salvadoran police officer who has been in charge of protecting the author's family and who would be in charge of protecting him in case of return, that the police do not have the capacity to offer due protection to the family and that their lives and physical integrity would be under threat if the author returns to El Salvador.[17]

3.4 The author further alleges that extensive country documentation demonstrates the continued problems of violence by the MS-13 gang and the inability of the Government to protect its people from that violence.[18] The author asserts that the violence in El Salvador largely stems from warring gangs, including MS-13, one of the most violent, which has more than "70,000 operatives".[19] He submits that, between 2012 and 2013, the homicide rate in El Salvador was 41.2 per 100,000 inhabitants[20] and that, according to the Associated

[13] See *Jose Henry Monge Contreras v. Minister of Citizenship and Immigration*, Docket: IMM-2226-15; Federal Court order (24 September 2015) (judicial review decision of the third pre-removal risk assessment decision).

[14] See *Jose Henry Monge Contreras v. Minister of Citizenship and Immigration*, Docket: IMM-650-14; IMM-2226-15; Federal Court order (28 May 2015) (stay of removal decision).

[15] The author provides letters from a school director and from his wife and police reports to support this statement.

[16] The author refers to, for example, the affidavit of Thomas Boerman, 19 October 2010, para. 19, included in the 2010 pre-removal risk assessment application.

[17] The author includes a copy of the statement dated 30 September 2010 by the police officer responsible for the case, stating that "being that [the victim and witness protection programme] only involves the obligation of each beneficiary to report the various locations to which he or she is going to move upon leaving the family home, so that a search for him/her is more effective in the case of his or her disappearance, it is not possible to provide the due protection".

[18] Various reports were annexed to the author's pre-removal risk assessment requests.

[19] Source not provided.

[20] See United Nations Office on Drugs and Crime, *Global Study on Homicide 2013: Trends, Context, Data* (Vienna, March 2014), pp. 47-48, tab 3.

Press, gangs were responsible for more than 50 per cent of homicides.[21] The author notes that, in October 2012, the United States of America Department of Treasury described the MS-13 gang as a "transnational criminal organization".[22]

3.5 The author claims that State-led efforts to broker a truce between the gangs in March 2012 were ineffective and that the MS-13 gang has grown more sophisticated in its attacks and operations, which places the author in further jeopardy. Accordingly, he contends that he would most likely be killed if he were returned to El Salvador.

3.6 The author claims that the negative 2015 pre-removal risk assessment decision, in which it was found that he would not be subjected to a risk of torture, risk to life or risk of cruel and "unusual" punishment upon his return to El Salvador, contained multiple errors. First, the assessment was not made in a timely manner: his request was submitted on 20 October 2010 and the negative decision was only received on 20 October 2015. The author claims to have been prejudiced by the passage of time. For instance, the assessment officer noted that, after years of threats, the applicant's family "has not been physically harmed" thanks to the police protection they receive. The author believes that the assessment would probably have been different if it had been made in a timely manner.

3.7 Second, the author claims that the pre-removal risk assessment officer did not adequately address the two key pieces of evidence. He dismissed for "lack of sufficiency" the statement of the Salvadoran police officer that the State party was unable to protect the author. He then dismissed the affidavit evidence of an expert in gang violence in Central America, on the grounds that the expert did not have specific knowledge of the author's circumstances and that his conclusions regarding the actions that the MS-13 gang would take against the author were speculative. The author notes that the expert provided extensive information about the way gangs operate and the general risk faced by individuals targeted by gangs, particularly when they were witnesses and victims of gang crimes, and about the inability of the State party to protect the victims. The author considers that this analysis clearly shows the risk he would face if returned to El Salvador.

3.8 Third, the author claims that the pre-removal risk assessment officer erred by focusing solely on efforts taken by the State party to protect people from gang violence, mainly through legislative measures, and not on the effective implementation of such measures. The author complains that the Officer cites efforts of a "gang truce" as evidence of the efforts of the Government, despite documentation provided in October 2014 stating that the truce no longer existed and that issues such as extortion and homicide were on the rise again.

3.9 The author also alleges that he suffers from depression and chronic post-traumatic stress disorder, and that he is highly vulnerable to psychological collapse in case of return to El Salvador.[23] He also indicates that the situation has negatively affected the mental health of his wife, who suffers from depression, and the emotional well-being of his daughters, as they live in fear for their safety.[24]

3.10 The author states that protection from refoulement is recognized internationally as a fundamental human right.[25] He notes that international treaties and customary law

[21] Source not provided.

[22] See, for example, Immigration and Refugee Board of Canada, "El Salvador: The presence and activities of Mara Salvatrucha (MS or MS-13) and of Barrio 18 (Mara 18 or M-18) in El Salvador, including recruitment; information on measures taken by authorities to fight maras, including legislation and protection offered to victims of the maras" (14 July 2014), tab 1, p. 3.; and Congressional Research Service, "Gangs in Central America", 20 February 2014, Tab 2, p. 1.

[23] A medical certificate dated 15 March 2012 is provided, stating that the author is "afflicted by chronic post-traumatic stress disorder … and depression secondary to his persecution and abuse in El Salvador" and that "he is highly vulnerable to psychological risk and collapse, should he be required to return to El Salvador".

[24] The author includes a medical certificate dated 15 July 2011 about the mental health of his wife, according to which she "has been known by [the National Psychiatric Hospital] since November 2006, and has been diagnosed with major depressive disorder".

[25] See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 3.

recognize an absolute and non-derogable prohibition of torture upon return and refers to the provisions of related international and regional human rights treaties and to international and regional human rights jurisprudence.[26]

3.11 The author submits that the motion to stay his removal order was denied on 28 May 2015 because of an obvious error in the application of the law, against which no domestic remedies remain available. He therefore claims that his removal from Canada would deprive him of his right to an effective judicial remedy, in violation of article 2 (3), read in conjunction with articles 6, 7, 9, 17 and 23, of the Covenant.

State party's observations

4.1 On 27 November 2015, the State party submitted its observations on the admissibility and merits of the communication. The State party argues that the author's communication is inadmissible for non-exhaustion of effective and available domestic remedies and for non-substantiation. Concerning the author's allegations under article 9 of the Covenant, the State party submits that they are incompatible *ratione materiae*.

4.2 The State party submits that the author has not exhausted all available domestic remedies and that his communication is therefore inadmissible. In that regard, the State party submits that the author failed to apply for an administrative deferral of removal from the Canada Border Services Agency, which is another avenue with a reasonable prospect of redress for the author. Individuals who raise new evidence of personal risk, meaning evidence that has not previously been assessed by a competent risk decision maker, such as a pre-removal risk assessment officer, may request a deferral of removal from an Agency enforcement officer. The Federal Court of Appeal has held that an enforcement officer must defer removal if there is compelling evidence that the removal could expose the person to "a risk of death, extreme sanction or inhuman treatment".[27] The State party further indicates that, if the decision on removal had been negative, the author could have sought judicial review of that decision.

4.3 Concerning the author's allegation that his removal to El Salvador would violate article 9 of the Covenant, the State party submits that, assuming that the author's allegations relate to a risk of arbitrary detention in El Salvador, this allegation is inadmissible because it is incompatible with the scope of State party's obligations under article 9 (1) of the Covenant. In that connection, it argues that article 9 (1) does not impose an obligation on States parties to refrain from removing individuals who face a real risk of arbitrary detention in the receiving State. It states that general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant limits a State party's exceptional obligations to foreign nationals who are subject to removal to situations "where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant".

4.4 The State party submits that the author's allegations concerning article 2 (3) are not sufficiently substantiated and should be held inadmissible. It further indicates that the author has not clearly stated what violations of article 2 (3) have taken place, either on its own or in conjunction with the other articles. It submits that the author's arguments concerning the 2015 pre-removal risk assessment decision and Federal Court stay decision are manifestly unfounded and that he has not provided any evidence to substantiate that those remedial avenues were arbitrary or amounted to a denial of justice. It claims that both the assessment officer and the Federal Court carefully considered the author's claims and the evidence provided, and that the Committee is not competent to re-assess those domestic decisions.

4.5 The State party also submits that the author has not sufficiently substantiated his allegations with respect to articles 17 and 23 (1) of the Covenant for purposes of admissibility. He has not explained how his removal to El Salvador would constitute an arbitrary or unlawful interference with his family life. In that connection, the State party

[26] See, for example, Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3.

[27] See, for example, *Canada (Public Safety and Emergency Preparedness) v. Shpati*, 2011 FCA 286, paras. 41-45 and 52.

refers to the jurisprudence of the Committee in *Stewart v. Canada*,[28] and alleges that the decision to remove the author was made in accordance with the law and therefore does not constitute an arbitrary or disproportionate interference with the author and his family, particularly considering that his immediate family lives in El Salvador.

4.6 Finally, the State party argues that the author's allegations under articles 6 and 7 of the Covenant that he would face a real risk of irreparable harm in case of return to El Salvador are not sufficiently substantiated.[29] It submits that the author has not established a prima facie case for the purpose of admissibility and refers to the Committee's views in *X v. Denmark* that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm.[30]

4.7 The State party submits that objective country reports indicate that El Salvador has a functioning police and judicial system capable of protecting its citizens. The State party acknowledges that there are still serious gang-related problems, including violence by the MS-13 gang. However, it notes that objective reports indicate that El Salvador does not consent or acquiesce to gang-related violence. It adds that a series of measures have been implemented to supress gang activity since the author's departure in 2005 and refers to a law banning criminal gangs enacted in 2010, which has resulted in some successful prosecutions. The State party also refers to the adoption of a law for the protection of victims and witnesses.[31]

4.8 The State party alleges that the author's family in El Salvador has availed itself of State protection that has proved effective and that the availability of State protection was canvassed in the three pre-removal risk assessment applications that the author has submitted. In the 2009 decision, and after having carefully considered objective country reports, the assessment officer found that the author had failed to rebut the presumption of state protection in El Salvador with clear and convincing evidence. That decision was upheld by the Federal Court, which observed that the author "did not explain why he could not avail himself of the state protection El Salvador is currently providing to the rest of his family".[32] The State party observes that, although there is a documented presence of the MS-13 gang in its own territory, the author has not reported any instances in which he would have been targeted since his arrival in 2005.

4.9 The State party also alleges that, in the light of the measures taken by the Government of El Salvador to suppress gang violence and protect its citizens, the author has failed to establish a credible claim that he is at risk of irreparable harm. Objective reports indicate that gang violence mainly affects small family business, public transportation services and vulnerable groups such as women and children. The State party submits that the author has none of the personal characteristics that would make him particularly vulnerable if returned to El Salvador. It alleges that the most recent event giving rise to the author's alleged fear of harm from gang violence occurred in 2003-2005 and that he has not presented any credible evidence that he is still a specific target of criminal gangs.

4.10 The State party notes that the author was able to live and work without harm in his country from July 1993 until November 2003 and that he has not explained why he was not targeted during that period of time, other than to speculate that the MS-13 gang may have considered him to be dead, or that the period coincides with the prison sentence of the gang members who allegedly killed his brother in 1993. It notes that the organized nature of the MS gang and its ability to cooperate from prison makes such interpretation implausible.

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[28] See communication No. 538/1993, *Stewart v. Canada*, Views adopted on 1 November 1996, para. 12.10.

[29] See, for example, communication No. 1234/2003, *P.K. v. Canada*, Views adopted on 20 March 2007, para. 7.3.

[30] See communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

[31] The State party does not indicate the date on which the law was enacted.

[32] The State party refers to the Federal Court judicial review decision of the first pre-removal risk assessment decision.

4.11 The State party submits that the alleged threats to the author's family and demands for money from gang members have been thoroughly assessed by the national authorities. In the 2015 pre-removal risk assessment, it was determined that the threats received did not point to the author being targeted by the MS-13 gang as a result of his reporting of the MS-13 gang members to the police in 1993.

4.12 The State party considers that the Committee should give important weight to the finding of the authorities of the State party in compliance with its jurisprudence. The State party submits that the author has not identified any aspects in which the decisions by the pre-removal risk assessment officers and the Federal Court in his case were manifestly arbitrary or otherwise amounted to a denial of justice.

4.13 The State party submits that, in the author's 2015 pre-removal risk assessment, it was determined that there was insufficient evidence to find that there were no internal flight alternatives available to him. The State party takes note of the author's allegation that there are no internal flight alternatives. It also takes into account that the author travelled to and considered two different locations in El Salvador (Tejute and San Matias), where he did not feel safe because of the presence of gang members. However, the State party submits that there is no evidence that the author was targeted by those gang members.

4.14 The State party further submits that, in the event that aspects of the author's communication are considered admissible, the communication should be considered without merit. It alleges that there are no substantial grounds to believe that returning the author to El Salvador in 2015 would expose him to a real and personal risk of irreparable harm under articles 6 and 7 of the Covenant.

4.15 While acknowledging that the author's allegations regarding the MS-13 gang are serious, the State party argues that the author has not demonstrated that the alleged incidents that took place in El Salvador more than 10 years ago mean that he would face a risk of irreparable damage if returned today. It reiterates that the Government of El Salvador is engaged in significant efforts to address gang violence, that the authorities have provided the author's family with protection and that he could seek police protection for himself should this be required.

4.16 The State party further submits that the fact that the author is considered a security concern and inadmissible to Canada must also be taken into consideration.

4.17 Finally, the State party submits that the officer for humanitarian and compassionate decisions acknowledged the author's claim that he suffered from depression and post-traumatic stress disorder but noted that no information had been provided showing that he had sought treatment or that the treatment would not be available in El Salvador. In the 2015 pre-removal risk assessment decision, the officer acknowledged the documentation provided regarding the psychological impact of the situation on the author but considered that the psychological aspect of the author's risk did not amount to a risk to life or a risk of cruel and "unusual" treatment or punishment, as per section 97 of the Immigration and Refugee Protection Act.[33]

Author's comments on the State party's observations

5.1 On 28 March 2016, the author submitted his comments on the observations of the State party. The author relies on his previous submissions regarding the factual context underlying his complaint, including the alleged errors with respect to previous risk determinations and proceedings in the State party.

5.2 With respect to the State party's statement that the author has not exhausted all available and effective remedies, the author submits that, in his case, seeking deferral of removal from the Canada Border Services Agency does not constitute an effective remedy. He submits that requesting deferral of removal does not constitute an appeal or redetermination of the issues canvassed in the 2015 pre-removal risk assessment and stay motion.

[33] Pre-removal risk assessment decision, 20 April 2015, p. 9

5.3 Referring to *Canada v. Shpati*, the author explains that the review by the Canada Border Services Agency is limited to any new evidence of personal risk not previously assessed.[34] The author alleges that the Agency officer would assume the findings of the 2015 pre-removal risk assessment decision to be correct, and any risk assessment would be limited to new evidence arising between the 40-day period after receiving the negative assessment decision on 20 April 2015 and the date when the removal order was to be executed, on 30 May 2015. Referencing the Committee's jurisprudence in *Muhonen v. Finland*,[35] the author claims that the limited scope of the request to defer removal makes it an ineffective remedy.

5.4 The author also submits that the deferral of removal is temporary and does not impact the underlying removal order.[36] In *Canada v. Shpati*, the Federal Court of Appeal explained that both the primary statutory duty to remove and the language chosen by Parliament to confine enforcement officers' discretion indicate that the range is relatively narrow. Their functions are limited, and deferrals are intended to be temporary. Enforcement officers are not intended to make, or to remake, pre-removal risk assessments or humanitarian and compassionate decisions.[37]

5.5 The author indicates that the purpose of a deferral of removal is to suspend temporarily the removal to allow the foreign national to adduce evidence in a pre-removal risk assessment that demonstrates the risk to life or of cruel and "unusual" punishment. He further indicates that this is not a right of appeal of a negative assessment decision that would allow for the findings of the assessment to be impugned. The author claims that, in his circumstances, considering that negative assessment and humanitarian and compassionate decisions have already been rendered and that there is no new evidence, a deferral of removal can no longer be justified.

5.6 The author also claims that the deferral of removal is a discretionary remedy applied by a Canada Border Services Agency officer and not a judicial remedy. He refers to the case of *Arhuaco v. Colombia*, in which the Committee explained that the term "domestic remedies" must be understood as referring primarily to judicial remedies.[38] He submits that the seriousness of the risk to his life requires a review by an independent and impartial tribunal, empowered to assess the risks that he faces in its totality and not merely on the basis of new evidence over the 40-day period between the pre-removal risk assessment refusal and the scheduled removal.

5.7 As regards his allegations under article 9, the author claims that the State party fails to address the full extent of the violations of his right to security of the person that would result from his removal. The author refers to general comment No. 35 on liberty and security of person, in which the Committee explains that the right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.[39]

5.8 The author submits that the State party's argument — that the protection afforded by the Covenant in the context of the removal of a foreign national does not extend beyond articles 6 and 7 — misreads general comment No. 31 and are not consistent with views

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[34] The Federal Court of Appeal stated that "The enforcement officer noted that the Board, and the pre-removal risk assessment and [humanitarian and compassionate] officers, had already assessed risk and found that he was not a refugee or a person in need of protection. And, since the officer was not satisfied that any new or personalized risk exists, the allegations of risk on return did not warrant deferring Mr. Shpati's removal … When, as in the present appeal, an officer is requested to defer removal after a negative [pre-removal risk assessment], any risk relied on must have arisen after the [assessment]". See *Canada v. Shpati* (footnote 27 above), paras. 16 and 44.

[35] See communication No. 89/1981, *Muhonen v. Finland*, Views adopted on 8 April 1985, para. 6.1.

[36] See communication No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 5.

[37] See *Canada v. Shpati* (footnote 27 above), para. 45.

[38] See communication No. 612/1995, *Vicente et al., v. Colombia*, Views adopted on 29 July 2007, para. 5.3.

[39] See general comment No. 35 (2014), on liberty and security of person, para. 9.

adopted by the Committee. He refers to *Warsame v. Canada*, in which the Committee found that the removal of the author would violate article 12 (4).[40]

5.9 The author claims that the scope of the protection of security of the person obliges the State to protect individuals from foreseeable threats to life or bodily integrity from private actors, such as the threats he suffered from the gang MS-13. The author reiterates that as a personal target of the gang, he faces a risk of torture and/or death, and cruel, inhuman or degrading treatment or punishment upon return to El Salvador. He claims that this risk gives rise to a violation of article 9 of the Covenant, as the State is unable to offer him and his family the necessary protection. He submits that the threats to his life and bodily integrity rise to the level of a risk of irreparable harm such as to give rise to a non-refoulement obligation, as contemplated in general comment No. 31.

5.10 In addition, the author submits that, considering the involvement of MS-13 in kidnapping in El Salvador, he also faces a foreseeable risk of arbitrary detention.

5.11 The author acknowledges that the initial communication was not detailed as to the nature of the alleged violations of articles 17 and 23 (1), and takes the opportunity to clarify their substance. He claims that, if he was to be killed or arbitrarily detained owing to his removal to El Salvador, the integrity of his family unit would be harmed. He also claims that his removal to El Salvador creates a real risk of irreparable harm to his wife and children by increasing substantially the already considerable risk of violence that they face at the hands of the gang MS-13.

5.12 The author claims that a violation of articles 17 and 23 (1) can give rise to irreparable harm. He reiterates that his family has been subjected to several death threats and attempted attacks at the hand of the gang MS-13 since his departure in 2005 and that, on several occasions, his wife has been asked by gang members to disclose his whereabouts and has even been told that the only reason she and her family are still alive is that the gang are waiting until he returns to his family.

5.13 The author claims that there is a real risk that his family will be attacked or killed by the gang MS-13 if he is removed to El Salvador, which amounts to a risk of irreparable harm that imposes an obligation not to remove him.

5.14 With regard to the State party's argument that he has not sufficiently substantiated his allegations under articles 6 and 7, the author states that he has made a prima facie case for infringement of those articles. While acknowledging that he is not a member of a group that is particularly vulnerable to gang violence, such as women and children, the author claims that non-membership in such groups does not prevent a claim of personal risk.[41] He claims that there is considerable, credible evidence that he was targeted personally prior to leaving El Salvador and that he still remains at risk.

5.15 The author refers to the State party's submission in which it recognized that his family had been harassed and threatened by the gang MS-13 since he had left for Canada. The author notes that the State party's contention that he has not been threatened by the gang since arriving in Canada fails to take into consideration adequately the small presence of the gang in Canada.

5.16 As to the State party's argument that an internal flight alternative is available in El Salvador, the author claims that the State party relies on the 2015 pre-removal risk assessment, in which much of the evidence he had submitted with regard to the conditions in the country was disregarded. The author submits that the violence perpetrated by the MS-13 gang embroils the entire country. He refers to a decision of the Federal Court of Canada in which it recognized the lack of viable internal flight alternatives in El Salvador for claims involving the gang.[42] He also alleges that this is the position of the Office of the

[40] See communication No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 8.6.

[41] See communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para. 8.7.

[42] *Henriquez de Umana v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 326 (CanLII), para. 25.

United Nations High Commissioner for Refugees (UNHCR) in its 2016 guidelines for assessing asylum claims from El Salvador.[43]

5.17 Regarding the State party's argument that police protection is available, the author reiterates his concern that the measures adopted by El Salvador to address gang activity are not effective. He submits that the State party has failed to challenge the author's evidence that the Government of El Salvador is unable to protect him and his family. The author also refers to the above-mentioned 2016 guidelines of UNHCR regarding the ability and willingness of the Government to provide protection, in which "it is reported that the police ... are usually not seen as offering a sufficient form of protection for those residents who are threatened by gangs, since their presence is only temporary and the gangs will return once the police move on after a few hours or days".[44]

5.18 The author further claims that State party's obligations under articles 6 and 7 do not allow for a national security exception. He refers to the Views of the Committee against Torture in *Sogi v. Canada*, explaining that the legal principles against removing individuals to countries where they face a real risk to life or of cruel, inhuman or degrading treatment are non-derogable.[45] He claims that, regardless of the threats he may or may not pose to national security, the State party cannot remove him to El Salvador in the light of the risks posed by removal.

5.19 Regarding his allegations under article 2 (3) of the Covenant, the author acknowledges that his initial communication was not sufficiently detailed. In that connection, he submits that, as the pre-removal risk assessment proceedings amounted to a denial of justice, the State party failed to provide an effective remedy to the alleged violations. He further submits that the assessment decision was marred by serious and numerous errors of fact and law, including an arbitrary approach when consi..ring the submitted evidence. He therefore considers that he has been a victim of a violation of his rights under article 2 (3), read in conjunction with articles 6, 7, 9, 17 and 23 (1), of the Covenant.

Additional observations by the State party on the admissibility and the merits

6.1 On 22 June 2016, the State party submitted additional observations on the admissibility and merits of the communication and reiterated its request to lift the interim measures. It maintains that the author's communication is inadmissible because he has failed to exhaust domestic remedies and his allegations are not sufficiently substantiated. The State party also maintains that, in the alternative, the communication is without merit.

6.2 The State party reiterates that requesting an administrative deferral of removal from the Canada Border Services Agency is an effective and timely remedy that offers a reasonable prospect of redress and must therefore be exhausted for the purposes of admissibility. It argues that the author's argument that the Agency is limited to new evidence of personal risk arising in the period after his negative pre-removal risk assessment is an overly narrow description of this remedy. It refers to *Atawnah v. Canada*, in which the Federal Court of Appeal held that an enforcement officer is not limited to an assessment of new risk arisen since the last assessment and has broader discretion to defer removal than previously described in case law.[46] A requirement to defer removal may

[43] See UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador" (2016), p. 45. "Considering the small territorial size of El Salvador, and given the ability of the gangs ... to operate country-wide ... a viable [internal flight or relocation alternative] is unlikely to be available to individuals at risk of being pursued by such [non-State] actors. It is particularly important to note the operational capacity of certain organized structures, particularly the MS ... to carry out attacks in any part of El Salvador." Available from www.refworld.org/docid/56e706e94.html.

[44] Ibid., p. 24.

[45] See Committee against Torture communication No. 297/2006, *Sogi v. Canada*, Views adopted on 16 November 2007, para. 10.2.

[46] See *Atawnah v. Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144, para. 15.

include, for example, new evidence substantiating an allegation of risk that was previously considered, or evidence that pre-dates the last risk assessment.[47]

6.3 The State party submits that deferral of removal is not a discretionary remedy as argued by the author and that the enforcement officer must defer removal if there is compelling evidence that removal could expose the person to a risk of death, extreme sanction or inhumane treatment. The State party indicates that an individual could apply for leave to seek judicial review of the decision if the request to defer removal were denied. The individual could also bring a motion for a stay of removal pending the outcome of the judicial review application. The State party submits that the many decisions of the Federal Court overturning enforcement officer decisions denying deferral of removal demonstrates that these rights are not illusory.[48]

6.4 As regards the author's allegations under article 9, the State party reiterates that this article does not impose an obligation on States parties to refrain from removing individuals who face a real risk of arbitrary detention or threat to their security in the receiving State.

6.5 The State party maintains its position that the author has not substantiated sufficiently his allegations under articles 17 and 23 (1) of the Covenant. It reiterates that States parties have a wide discretion to remove aliens from their territory, particularly when security concerns are at stake. The decision to remove the author was made in the light of the significant State interest in ensuring that individuals who are deemed a security concern are removed therefrom in accordance with domestic legislation and cannot be said to constitute an arbitrary or disproportionate interference with the rights of the author and of his family.

6.6 The State party reiterates its arguments regarding the author's allegations under articles 6 and 7 of the Covenant. It further refers to recent measures that have been implemented in El Salvador to support its position that the author would not face a real risk of irreparable harm in case of return there. In that connection, the State party submits that, in July 2015, the "Secure El Salvador Plan" was launched, aiming, among other things, at creating a more effective justice system, improving services for victims and strengthening governmental institutions in order to address criminality.[49]

6.7 The State party also indicates that El Salvador plans to take "extraordinary measures" to further limit the flow of communication between incarcerated gang members and those on the outside by transferring hundreds of jailed gang leaders to higher-security facilities.[50]

6.8 Furthermore, it refers to anti-gang reform measures passed on 21 April 2015 by the El Salvador Legislative Assembly, aiming at crime prevention and criminal justice reform,[51] and also refers to the decision of the El Salvador Supreme Court of 24 August 2015, in which it held that gangs could be charged with terrorism offences.[52] It indicates that, on 25 March 2016, the Government of El Salvador passed a law that imposes hefty restrictions on convicted bosses of gangs who are incarcerated.[53]

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[47] Ibid. See also *Emelian Peter v. The Minister of Public Safety and Emergency Preparedness*, 2016 FCA 51, para. 7.

[48] See, for example, *Ragupathy v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370.

[49] See S. Kinosian and A. Albaladejo, "El Salvador's Security Strategy in 2016: Change or More Mano Dura?" (Security Assistance Monitor, 29 February 2016). Available from http://securityassistance.org/blog/el-salvador%E2%80%99s-security-strategy-2016-change-or-more-mano-dura.

[50] See J Partlow and S.E. Maslin, "El Salvador's gangs call a cease-fire, but many doubt it will hold", *Washington Post*, 3 April 2016.

[51] See S. Tabory, "El Salvador Reforms Classify Gangs as Terrorists, Criminalize Negotiation", *In Sight Crime* (25 April 2016).

[52] See C. Ribando Seelke, "El Salvador: Background and U.S. Relations" (Congressional Research Service, 4 February 2016), p. 10. Available from https://fas.org/sgp/crs/row/R43616.pdf.

[53] See O. Batres, "El Salvador passes law cracking down on jailed gang bosses", *Yahoo News* (1 April 2016). Available from www.yahoo.com/news/el-salvador-passes-law-cracking-down-jailed-gang-225418072.html?ref=gs.

6.9 The State party maintains that, although the impact of the above measures is unknown and gang-related violence persists, El Salvador is engaged in significant efforts to address gang-related problems in the country.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee notes the State party's argument that domestic remedies have not been exhausted because the author has failed to apply for an administrative deferral of removal from the Canada Border Service Agency. It also notes the argument of the author that the administrative deferral of removal is temporary, limited to the assessment of new evidence and largely depends on the discretion of the Agency enforcement officer. It further notes the State party's argument that a negative decision on the deferral of removal can be subjected to judicial review and that it is also possible to bring a motion for a stay of removal pending the outcome of the judicial review application. The Committee notes, however, that such judicial review is made mainly on the basis of procedural issues and does not involve a review of the merits of the case. In view thereof, and taking into account that the author submitted three applications under the pre-removal risk assessment procedure, one application under the humanitarian and compassionate procedure and applications to the Immigration and Refugee Board and the Federal Court, the Committee considers that the author has exhausted all available domestic remedies in compliance with the requirements of article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes the State party's argument that the author's allegations under articles 2 (3), 6, 7, 17 and 23 (1) are insufficiently substantiated. As regards the author's allegations under articles 6 and 7, read alone and in conjunction with article 2 (3), the Committee is of the view that, for purposes of admissibility, the complainant has provided sufficient information to demonstrate that his removal to El Salvador would expose him to a risk of irreparable harm and that no effective remedies to challenge his removal were available to him. Accordingly, the Committee declares the claim admissible.

7.5 With regard to the author's allegations under articles 17 and 23 (1), the Committee notes the author's claims that, if he were killed or arbitrarily detained owing to his removal to El Salvador, the integrity of his family unit would be harmed. It also notes the author's submission that his wife was told by the MS-13 gang that the only reason that she and her daughters were alive was because they knew that one day the author would return to them.[54] It further notes that the author has not provided any further information, evidence or explanation on how his rights under articles 17 and 23 of the Covenant would be violated by the State party through his removal to El Salvador in a manner that would pose a substantial risk of irreparable harm such as that contemplated under articles 6 and 7 of the Covenant.[55] The Committee concludes that this part of the communication is inadmissible pursuant to article 3 of the Optional Protocol.

7.6 The Committee notes the State party's argument that the author's allegations under article 9 of the Covenant are incompatible *ratione materiae*. In that connection, it also notes the author's claims that the scope of the protection of security of the person obliges the State to protect individuals from foreseeable threats to life or bodily integrity from private actors, and that he faces a foreseeable risk of arbitrary detention, considering the involvement of MS-13 in kidnapping. The Committee finds the author's allegations

[54] See footnote 6 above.

[55] See general comment 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

concerning a violation of article 9 admissible to the extent that, in the circumstances of the present case, the removal of the author may subject him to a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[56]

7.7 Accordingly, the Committee declares the author's claims under articles 6, 7 and 9, read alone and in conjunction with article 2 (3) of the Covenant, to be admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that his removal to El Salvador would expose him to a risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. The author claims that he became a target of the MS-13 gang owing to his participation in the investigation of the murder of his brother in 1993, which resulted in the conviction and imprisonment for 10 years of three MS-13 gang members involved in the murder, and a series of attacks against him and threats against his family.

8.3 The Committee notes the author's submission that threats towards his wife and daughters have continued since he left El Salvador, including requests for money in exchange for his daughters not being hurt, and that those threats have required his daughters to be home schooled.[57] It also notes the author's argument that the negative 2015 pre-removal risk assessment decision contained multiple errors and did not accord sufficient weight to the evidence provided.

8.4 The Committee notes the State party's argument that the Immigration and Refugee Board found that the author was inadmissible to Canada on security grounds owing to his membership in the Farabundo Marti National Liberation Front when it was considered, prior to 1992, to be an "organization believed to engage in or instigate the subversion by force of any Government". However, it also notes that, since 1992, the Farabundo Marti National Liberation Front has been a legal political party in El Salvador and that the State party does not provide any information that would enable the Committee to conclude that the author currently represents a threat to national security. Furthermore, the Committee notes that no justification or extenuating circumstances may be invoked to excuse a violation of the State party's non-refoulement obligations.[58] Those obligations accordingly cannot be overridden by any threat the author allegedly may have posed. Any such a threat would have to be addressed, if necessary, through other means that are compatible with the State party's obligations under the Covenant.

8.5 The Committee notes the State party's argument that three pre-removal risk assessment officers, upheld by the Federal Court, found that the author did not face a personal risk at the hands of the MS-13 gang and that he had failed to rebut the presumption of State protection in El Salvador with clear and convincing evidence. It also notes the State party's argument that the author has not demonstrated that the alleged incidents between 2003 and 2005 mean that he would face a risk of irreparable harm if returned today, particularly considering that El Salvador has implemented a series of measures to suppress gang activity since the author's departure.

8.6 The Committee notes the State party's argument that, should this be required, the author could seek police protection for himself in El Salvador and that there is insufficient evidence to find that there are no internal flight alternatives available to him. It also notes the State party's argument that the author has not identified any ways in which the pre-removal risk assessment decisions were manifestly arbitrary or otherwise amounted to a denial of justice.

[56] See general comment No. 35, para. 57.

[57] See footnotes 5-9 above.

[58] See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 3.

8.7 The Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. It also recalls that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Therefore, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[59] The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.

8.8 In that connection, the Committee notes the direct and repeated acts of violence by the gang MS-13 suffered by the author and his close relatives, which are not disputed by the State party. These include the murder of the author's brother; the author's submission that he was shot in the knee by an MS-13 gang member in July 1993 and that, following the release of the convicted MS-13 gang members, he was attacked in November 2003 and March 2004; and that, during those attacks, two of his friends were murdered. The Committee further notes the author's contention that, in January 2005, he and his brother were threatened with a knife by a member of MS-13 and that the gang has made repeated threats against his wife and daughters, including by firing shots at their house, and that those threats have caused one daughter to move and the other to be home schooled.

8.9 The Committee notes that, throughout the asylum procedure, the State party did not accord weight to various aspects of the information provided by the author, including: (a) the affidavit of an expert on gang violence in Central America, which concluded that the author would be "at extraordinarily high risk of egregious physical harm and death if returned" and that El Salvador would be unable to provide him with due protection;[60] (b) the statement of the Salvadoran policeman responsible for protecting the author's family that the State did not have the capacity to provide him and his family with the protection they need;[61] (c) the submission that the author's wife had been told by the MS-13 gang that the only reason that her daughters and herself were alive is because they knew that one day the author would return to them;[62] and (d) the medical certificate, according to which the author suffered from chronic post-traumatic stress disorder and that he would be highly vulnerable to psychological collapse in case of return to El Salvador.

8.10 Moreover, while noting the State party's argument that reports indicate that gang violence mainly affects small family business, public transportation services and vulnerable groups, such as women and children, and that the author does not fall into any of those categories, the Committee also notes that the State party did not give adequate weight to other elements contained in the reports provided by the author in support of his pre-removal risk assessment application, according to which violence from gangs particularly affects victims and witnesses of crimes and that El Salvador would be unable to provide due protection to them.[63] The Committee further notes that, taking into account the profile of the author, this information is of particular relevance. In that regard, the Committee notes the numerous continuing public reports available regarding the extent of gang violence in El Salvador in general and against witnesses in particular.[64] It notes the State party's

[59] See *X v. Denmark* (footnote 30 above), para. 9.2.

[60] See supplemental affidavit of Thomas Boerman, 13 October 2011, para. 28 (included in support of the pre-removal risk assessment application, 19 March 2012).

[61] See statement of the policeman responsible for the case, footnote 18 above.

[62] See footnote 6 above.

[63] See, for example, L.P. Farifia et. al., *No Place to Hide: Gang, State and Clandestine Violence in El Salvador* (International Human Rights Clinic and Harvard Law School, 2010), pp. 160-161; and Immigration and Refugee Board of Canada, *response to information request*, 14 July 2014, p. 6 ("gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution").

[64] See, for example, footnote 44 above, pp. 24-25; "El Salvador Human Rights Report, 2015" (United States State Department), p. 9; N. Lakhani, "El Salvador sees most deadly month in 10 years as

argument that El Salvador has recently taken measures to eliminate gang violence, but that the impact of those measures remains unknown and that gang-related violence persists.

8.11 In the light of the above, the Committee considers that, when assessing the risk faced by the author, the State party failed to adequately take into account the totality of the available information and its cumulative effect, according to which the author would be at real risk of irreparable harm if removed to El Salvador. In such circumstances, it considers that the author's removal to El Salvador would violate articles 6 and 7 of the Covenant.

8.12 Having reached the above conclusion, the Committee decides not to examine separately the author's claims under articles 2 (3) and 9 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that, if implemented, the removal of the author to El Salvador would violate his rights under articles 6 and 7 of the Covenant.

10. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's claim, taking into account the State party's obligations under the Covenant and the present Views. The Committee requests the State party to refrain from expelling the author while his request for asylum is being reconsidered.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

violence overwhelms nation", *The Guardian*, 6 April 2015; and S. Kinosian, "El Salvador's Gang Violence: Turf Wars, Internal Battles and Life Defined by Invisible Borders" (Security Assistance Monitor, 10 February 2016), available from http://lawg.org/action-center/lawg-blog/69-general/1579-el-salvadors-gang-violence-turf-wars-internal-battles-and-life-defined-by-invisible-borders.